

(2018) 04 RAJ CK 0152

In the Rajasthan High Court

Case No : Writ Misc Application No. 97 of 2018

Smt. Pinki Jha @APPELLANT@Hash Union of India

Date of Decision : 09-04-2018

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 34
Army Act 1950 — Section 182
Constitution of India, 1950 — Article 226

Citation : (2018) 04 RAJ CK 0152

Hon'ble Judges : DR. PUSHPENDRA SINGH BHATI, J

Bench : Single Bench

**Advocate : S.P. Sharma, Sanjeet Purohit, Falgun Buch, BP Bohra, Major
Ridhishri Sharma, Harshit Pant**

Final Decision : Disposed Off

Judgement

1. This Court while passing order dated 23.3.2018 in S.B. Civil Writ Petition No.3770/2018, passed the following directions :

(i) This writ petition is transferred to learned Armed Forces Tribunal while exercising the powers under Section 34 of the Armed Forces Tribunal Act,

2007 to be heard at Jodhpur on 9th April, 2018 as per the scheduled sitting.

(ii) Learned DJAG assures this Court that sentence of petitioner no.2 shall be suspended by the Authorities after imposing stringent terms and

conditions in accordance with law and it is directed that the assurance shall be complied with in terms of Section 182 of the Army Act, 1950 by the

respondents. This Court wanted the release of the petitioner no.2 within 24 hours, but the Officer informed the Court that General Officer

Commanding is not in town, thus, consideration shall be possible only after his return, therefore, the consideration is directed to be completed on or

before 27.03.2018.

(iii) This Court is constitutionally empowered under Article 226 of the Constitution of India to make any intervention for granting suspension of

sentence to the petitioner and the Court is convinced that such wide powers to adjudicate dispute pertaining to the respondents cannot be curtailed but

have to be utilized with great care and caution in rare circumstance in the subject matter of Armed Forces Tribunal Act, 2007, however, this Court

restrains from passing any direct order to suspend the sentence while exercising the powers under Article 226 of the Constitution of India in light of

the assurance given by the learned DJAG present in person.

(iv) The respondents shall pass orders of application seeking suspension of sentence in accordance with the aforementioned observations while

exercising powers under Section 182 of the Army Act, 1950 on or before 27.03.2018.

(v) This Court believes that the assurance given by the DJAG before this Court shall be honoured in right spirit, thus, the present petition is transferred

to Armed Forces Tribunal with a direction to the petitioner to take up all the issues pertaining to his Army service before the Armed Forces Tribunal.

This order shall not prejudice either of the parties when the matter is taken up by the Tribunal.

Â (vi). The respondents shall be free to impose whatever conditions and restrictions permitted in law upon petitioner no.2 while exercising powers of

suspending sentence under Section 182 of the Army Act, 1950.

(vii) While taking note of the fact that in the jurisdiction of Armed Forces Tribunal, Jodhpur (Western Rajasthan) there resides a heavy population of

armed forces personnel and nonavailability of the Armed Forces Tribunal for last six months here has caused grave misery to such armed forces

personal, which is contrary to the spirit of legislation of Armed Forces

Tribunal Act, 2007 and the precedent law laid down by the Hon`ble Apex Court to ensure appropriate redressalÂ mechanism for the armed force

personnel, we direct the Defence Secretary of Union of India alongwith all concerned in the Union of India to ensure that there shall be sitting of

Armed Forces Tribunal for minimum two weeks in every month of the Gregorian calendar henceforth at Jodhpur, which is also the Principal Seat of

Rajasthan High Court.Â??

2. In light of these directions, the learned Authority passed appropriate orders

regarding suspension of sentence of petitioner's husband on

26.3.2018.

3. This Court records satisfaction upon the necessary orders being passed by the learned Authority, as mentioned above.

4. The reason for limited adjudication by this Court under Article 226 of the Constitution of India was low medical category of petitioner's husband

and lack of consideration of the application for suspension of sentence of one year's rigorous imprisonment. This Court was extremely concerned

that the petitioner had been virtually rendered remediless due to non-availability of Armed Forces Tribunal for last six months at Jodhpur. This

Court has already directed Defence Secretary to ensure sitting of Armed Forces Tribunal at Jodhpur as there is good number of armed forces

personnel in Jodhpur and its surrounding areas. Condition (vii) of para-38 pertains to the said direction. Since learned Armed Force Tribunal is

sitting today, this Court does not find any reason to keep the proceedings pending before it any long, hence, Registry of Hon'ble High Court is

directed to ensure that the record of case is transferred to learned Armed Forces Tribunal, Circuit Bench, Jodhpur today itself. The Deputy Registrar

(Judl.) of this Court shall ensure that complete record is handed-over to concerned staff of learned Armed Forces Tribunal at Jodhpur for further

adjudication of the matter.

5. It is expected from learned Armed Forces Tribunal, Jodhpur that the matter shall be heard at an earliest possible date. We further take note of

the fact that the order of suspension of sentence passed by the learned Authority dated 26.3.2018 carries following observation :

(a) The sentence of one year of rigorous imprisonment awarded to the above named convict is hereby suspended with immediate effect till 1700h

on 09 April, 2018 only by which time the said convict may have either obtained a bail from the Hon'ble Armed Forces Tribunal, Jodhpur or any

other such relief in his favour. In case the convict fails to get any such order in his favour, he shall be required to surrender to the Army Authorities so

as to be committed back to the Central Jail, Jodhpur for undergoing the balance of the sentence. However, the sentence of Dismissal awarded

to the said convict shall remain intact.

6. Thus, it is clear that the learned Authority has exercised its jurisdiction of

suspending the sentence upto 1700 Hours on 09 April, 2018 only vide the aforesaid order. Since learned Armed Forces Tribunal, Jodhpur is sitting today onwards, therefore, while sending whole matter to learned Armed Forces Tribunal, we deem it appropriate to direct the respondents that the order dated 26.3.2018 of suspending the sentence shall remain in currency until learned Armed Forces Tribunal, Jodhpur passes an appropriate order after adjudication on the application seeking suspension of sentence. It is further made clear that until the learned Armed Forces Tribunal, Jodhpur adjudicates and passes appropriate orders on suspension of sentence granted by the learned Authority vide order dated 26.3.2018 the same shall remain in currency. Further, the order passed by Superintendent, Central Jail, Jodhpur dated 06.4.2018 to the extent of requiring petitioner's husband to surrender after availing sentence suspension shall remain stayed till appropriate orders are passed by the learned Armed Forces Tribunal regarding the sentence.

7. With the aforesaid observations, the application is disposed of.